

KNOWLTON
LAW GROUP, LLC

October 11, 2020

Wauwatosa Police Department
Attn: Chief Barry Weber
1700 North 116th Street
Wauwatosa, WI 53226

Via email: bweber@wauwatosa.net
(confirmation via First Class USPS)

City of Wauwatosa
Attn: Mayor Dennis McBride
7725 West North Avenue
Wauwatosa, WI 53213

Via email: dmcbride@wauwatosa.net
(confirmation via First Class USPS)

Re: Notice to Preserve Electronic Evidence
Notice of Anticipated Civil Rights Litigation

Dear Chief Weber and Mayor McBride:

This correspondence hereby notifies the Wauwatosa Police Department ("WPD") and the City of Wauwatosa ("City") to preserve all evidence, including but not limited to electronically stored information, copies and backup, as defined by Rule 34 of the Federal Rules of Civil Procedure, along with any paper files which WPD and City maintain, relevant to law enforcement activity, arrests, transport and detentions of October 10, 2020, in anticipation of civil rights and related litigation.

"The unanimous view of the federal courts is that federal law imposes upon a party a duty to preserve relevant evidence from the time that the party can reasonably anticipate litigation."¹ You are hereby notified on October 11, 2020, of anticipated litigation.

This notice applies, but is not limited to, WPD's and the City's on - and off-site computer systems and removable electronic media plus all computer systems, services, and devices (including all remote access and wireless devices) used for WPD's and the City's overall operation. This includes, but is not limited to, video, audio, digital and any/all combination therein, recordings, e-mail and other electronic communications; electronically stored documents, records, images, videos, graphics, recordings, spreadsheets, databases; calendars,

¹ Koppel, Joshua M., *Federal Common Law and the Courts' Regulation of Pre-litigation Preservation*, Stanford Journal of Complex Litigation, Volume 1, 2012

system usage logs, contact manager information, telephone logs, internet usage files, deleted files, cache files, user information, and other data.

Further, this notice applies to archives, backup and disaster recovery tapes, discs, drives, cartridges, voicemail and other data. All operating systems, software, applications, hardware, operating manuals, codes, keys and other support information needed to fully search, use, and access the electronically stored information must also be preserved.

The importance of immediate action cannot be overstated. Electronically stored information is easily corrupted, altered, and deleted in normal daily operations. Even booting a drive, running an application, or reviewing a document can permanently alter evidence. An important method for preserving data in its original state is to have a forensic image (mirror image or clone image) made of pertinent hard drives of both office and home computers used for business, operations, surveillance, monitoring, communication, etc., and of network servers. This image captures all current data, including the background or metadata about each document. Simply copying data to a CD-ROM or other common backup medium is not adequate. For each captured image file, record and identify the person creating the image and the date of creation. Secure the file to prevent subsequent alteration or corruption and create a chain of custody log. Once the forensic data image file is created, the pertinent computer or other device can be placed back into operation.

Special attention for forensic imaging and preservation applies specifically to all officers, professional and support staff, contractors, and cooperating agents, including National Guard personnel, and all others involved in all aspects of, including but not limited to, the monitoring, procedures, planning, arrest, detention, transport, processing, administrative and physical actions of any/all law enforcement in Wauwatosa, Wisconsin, on October 10, 2020, as well as specifically to electronic and digital capture (audio, visual and any combination thereof) of activities located at, near and/or around 76th Street and North Avenue, in Wauwatosa, Wisconsin, including surveillance footage taken from all vantage points thereto, including drone, as well as temporary and permanent camera/audio recording in vehicles, on officers, agents and staff, and in/around any detention points, including private property if used for public purpose, and stations.

This preservation notice covers the above items and information for the following date as indicated above: October 10, 2020.


Follow the above procedures to preserve electronic information created upon this notice.

Current law and rules of civil procedure clearly apply to the discovery of electronically stored information just as they apply to other evidence, and confirm the duty to preserve such information for discovery. You, WPD and the City, and your officers, employees, agents, and affiliated organizations must take all reasonable steps to preserve this information until this legal matter is finally resolved. Failure to take the necessary steps to preserve the information addressed in this letter and/or other pertinent information in your possession or control may result in serious Court sanctions and/or penalties.

Further, to properly fulfill your preservation obligation, stop all scheduled data destruction, electronic shredding, rotation of backup tapes, and the sale, gift or destruction of hardware. Notify all individuals and affiliated organizations of the need and duty to take the necessary affirmatives steps to comply with your duty to preserve evidence.

Additionally, following are additional law enforcement agencies whose insignia and participation was recognized and/or confirmed for October 10, 2020 at your request/solicitation, and are included as entities in control/receipt as custodians of pertinent and implicated data and information implicated by this notice: Sauk County Sheriff, Winnebago County Sheriff, Ozaukee County Sheriff, Iowa County Sheriff, Rock County Sheriff, Fond du Lac County Sheriff, City of Waukesha Police Department, West Allis Police Department, Wisconsin State Fair Police Department, Oak Creek Police Department, Brookfield Police Department, Wisconsin National Guard. It is expected that you advise them immediately of their duty on your behalf. If there are additional entities that are not included herein and were present/participants in fact or receipt of information and/or data, it is expected that you advise them immediately of this notice, as well as provide contact information to us without delay.

Sincerely,



Attorney Kathryn L. Knowlton
SBN: 1032814